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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,752	12/20/2001	David W. Koenig	KCC 4742 (14, 442A)	2567

321 7590 06/23/2003

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

WEBB, JAMISUE A

ART UNIT PAPER NUMBER

3761

DATE MAILED: 06/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

**Office Action Summary**

Application No.

10/028,752

Applicant(s)

KOENIG ET AL.

Examiner

Jamiesue A. Webb

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. With respect to Claims 1-7, 12-19, 24-28, 35-42: the phrase "Yucca sp." is indefinite. It is unclear what the "sp." is referring to. If it is some form of abbreviation the examiner suggest writing out what "sp" stands for.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-6, 12-18, 25-28 and 33-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrell et al. (US 2002/0136755) in view of Palumbo et al. (US 2003/0035785).

7. With respect to Claims 1-6, 12-18, 25-28 and 33-42: Tyrell discloses the use of an absorbent article (10) that is a diaper worn by infants (page 8, paragraph 0057), has a topsheet (22), backsheet (22) and core (24) located there between. Tyrell discloses the use of a skin care composition which contains 0.1-10% of an extracted botanical extract such as a yucca extract (page 7, paragraph 0040; page 22, paragraph 0153).

8. Tyrell however discloses the skin care composition being located on top of the body side liner and fails to disclose the skin care composition being located between the bodyfacing surface of the liner and the backsheet. Palumbo et al. discloses the use of a skin care composition being placed in an absorbent article, in which the composition is incorporated into the structure by diverse methods which are apparent to those skilled in the art, by applied to the topsheet, to the core, or to the core side of the backsheet, but either coating or impregnating (page 5, paragraph 0091). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the skin care composition of Tyrell, be incorporated throughout the diaper, as disclosed by Palumbo in order to prevent or reduce skin rash, as well as reduce the enzyme activity enzymes (See abstract).

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9. Claims 7-11, 19-23, and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrell et al in view of Palumbo et al. as applied to claims 1 and 2 above, and further in view of Henderson (6,228,265).

10. With respect to Claims 7-11, 19-23, and 29-32: Tyrell and Palumbo, as discloses above, disclose the use of a Yucca extract, but fails to disclose the yucca extract is *Yucca schidigera*. Henderson discloses the use of yucca extract for the acceleration of bacterial metabolism, and the particularly preferred yucca extract is *Yucca schidigera* (column 1, lines 33-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the Yucca extract of Tyrell, be *Yucca schidigera*, as disclosed by Henderson, in order to provide the accelerated bacterial metabolism in organic waste. (See Henderson, abstract and column 1).

### ***Conclusion***


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reddy et al. (5,507,250) discloses the use of *Yucca schidigera*, Albacarys et al. discloses the use of skin treatments with Yucca, Lange et al. (US 2003/0105445) discloses the use of a breast pad with Yucca extracts, Maxwell et al. (5,860,391) discloses the use of Yucca extracts for counteracting odors.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw   
June 15, 2003

  
**WEILUN LO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**